IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2006

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

WRIT PETITION No.17285 of 2001

Management of Akkur Primary
Agricultural Co-op. Bank Ltd.,
Akkur (Post) Nagapattinam District,
rep.by its Special Officer ... Petitioner

Vs.

1. Gnanasekaran

2. The Deputy Commissioner of Labour,
Thiruchirapalli .. Respondents

The Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari as stated therein.

For petitioner : Mr.A.Muthukumar
For respondents : Mr.P.N.Peruvazuthi - for R1
Mr.M.Mahalingam - G.A.- for R2

O R D E R

The Writ Petition has been filed praying for the issuance of a Writ of Certiorari, to call for the records of the second respondent in T.N.S.E Appeal No.5/97 and its order, dated 07.05.2001, and quash the same.

2. Heard the learned counsel for the petitioner as well as the respondents.

3. It is the case of the petitioner Co-operative Bank that the first respondent had joined the Bank as a Clerk, on 01.05.1976, and was later appointed as Secretary from 01.06.1991. The first respondent had committed serious misconducts, including mis-appropriation of Rs.1,75,000/- by falsification of accounts, creating bogus entries . Therefore, the first respondent was placed under suspension from 24.10.1996. A detailed charge memo, dated 24.10.1996, was issued to him, for which the first respondent had offered his explanation through his letter,dated 18.11.1996 and further, by a communication, dated 04.03.1997. A domestic enquiry was conducted with one Mr.Muthaiyan, retired Deputy Registrar as the

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

Enquiry Officer. All principles of natural justice were followed during the domestic enquiry. The first respondent was afforded adequate opportunity to cross-examine the witnesses and also to adduce the evidence on his behalf by producing documents. The enquiry was completed on 18.04.1997 and the Enquiry Officer had submitted his findings on 28.05.1997, holding that all the charges levelled against the first respondent stood proved. Based on the enquiry findings, the management had issued a second show cause notice to the first respondent on 25.06.1997, by a letter, dated 21.07.1997, for which the first respondent had submitted his explanation. Eventhough a personal hearing was offered to the first respondent, he had not appeared for the same. Taking into consideration the explanation offered by the first respondent and the management of the petitioner Bank the dismissal order was passed on 01.09.1997, in pursuance of the Executive Committee Resolution, dated 23.08.1997.

4. Aggrieved by the order of dismissal, the first respondent had filed an appeal before the Commissioner of Labour (Appellate Authority under the Tamil Nadu Shops and Establishments Act, 1947) Thiruchirapalli, in T.N.S.E Appeal No.5 of 1997. In spite of the petitioner-Bank raising the issue of jurisdiction stating that the said Appellate Authority had no jurisdiction to hear the appeal, the appeal was heard by the second respondent and orders were passed on 07.05.2001, allowing the appeal filed by the first respondent. By order, dated 07.05.2001, the second respondent had ordered the first respondent to be reinstated in service with consequential benefits from 01.09.1997. The order of the second respondent was served on the petitioner Bank on 20.08.2001.

5. According to the petitioner, the second respondent had no jurisdiction under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947. The only remedy open to the first respondent was by way of an appeal to be filed before the Registrar of Co-operative Societies as provided under the special by-laws of the petitioner bank governing the service conditions of the employees .

6. On the other hand, the learned counsel for the first respondent contends that there is no legal impediment for an appeal to be entertained by the appellate authority under the Tamil Nadu shops and Establishments Act, 1947, against an order passed dismissing the employee from service. According to him , eventhough the by-laws would provide for an appellate authority, it is open to the aggrieved employee to file an appeal under the provisions of the Tamil Nadu Shops and Establishments Act, since the said by-laws cannot over ride the provisions of the Act and in such circumstances the order of the appellate authority, dated 07.05.2001, reinstating the first respondent into service made in T.N.S.E Appeal No.5 of 1997, is valid in law.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

7. On the contrary, the learned counsel appearing for the petitioner had placed emphasis on the following cases stating that under Section 41 (2) of the Shops and Establishments Act,1947, the appellate authority has no power to hear the appeal since co-operative institutions have been exempted from the provisions of the Act by G.O.Ms.No.5780 Industries Labour and Co-operative , dated 11.12.1963, exempting co-operative institutions from the provisions of the Tamil Nadu Industrial Establishments Act, 1947, from the date on which the model by-laws were incorporated. It is further contended by the learned counsel appearing for the petitioner that the first respondent was given all reasonable opportunities of participation and of hearing during the enquiry and that he cannot raise the plea of lack of opportunity to defend himself. It is also pointed out that the first respondent had been involved in various other cases of mis-appropriation etc. and his acquittal in some of those cases was only on the ground of benefit of doubt being given to him.

a. The learned counsel for the first respondent had relied on the following cases to support his contention that an appeal against an order of termination of an employee would be maintainable under Section 41 of the Tamil Nadu Shops and Establishments Act, 1947. The Supreme Court in the case of P.Sarathy Vs. State Bank of India reported in 2000 (III) CTC 552 has held as follows :-

> "9. The Deputy Commissioner of Labour (Appeals), Madras, which is the authority constituted under the Tamil Nadu Shops and Establishments Act, 1947 has the jurisdiction to adjudicate upon an order by which the services of an employee are terminated. He has the jurisdiction to decide whether the order of dismissal, passed by the employer, was valid or it was passed in violation of any statutory rule or principles of natural justice. Under Section 41(3), the order passed by him is binding on the employer as also on the employee. Thus, the Deputy Commissioner of Labour (Appeals) may not be a "civil Court" within the meaning of the Code of Civil Procedure but it is definitely a "court". "

b. A Division Bench of this Court in the case of S.Radhakrishnan Vs. The Tamil Nadu Agro Engineering and Service Co-operative Federation Limited and another, reported in 2001 (2) CTC 473 has also endorsed the position that an appeal can be maintained under Section 41 of the Tamil Nadu Shops and Establishments Act with regard to termination of service of an employee.

c. The learned single Judge of this Court has discussed in detail the implications of the powers vested in the appellate authority under Section 41 of the Tamil Nadu Shops and Establishments

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Act, 1947. The Supreme Court in Remington Rand of India Limited Vs R.Jambulingam has clearly held that the jurisdiction of the appellate authority under Section 41 of the Tamil Nadu Shops and Establishments Act, 1947, is of a wider scope unlike that of the Industrial Tribunal in an application under Section 33 of the Industrial Disputes Act. It is further held that having subjected to the jurisdiction of the appellate authority, it would not be open for a person to raise the issue of jurisdiction at a later stage.

d. In the case of N.Madhavan and the Deputy Commissioner of Labour and another reported in 2001 1 T.L.N.J.132, a learned single Judge of this court has held that once a statute creates a forum for appeal under Section 41 (2) of the Tamil Nadu Shops and Establishments Act, 1947, there cannot be a valid contract to decide the dispute in a different forum.

8. The learned counsel for the petitioner has placed before this court an order of a Division Bench of this Court in Managing Director, Repatriate Co-operative Finance and Development Bank Ltd., Vs. Deputy Commissioner of Labour and another reported in 1993(1) LW 560, in which Sections 6 and 41 of the Tamil Nadu Shops and Establishment's Act, 1947, as well as G.O.Ms.No.5780, dated 11.12.1963, had been dealt with. The learned counsel appearing for petitioner had emphatically argued that according to G.O.Ms.No.5780 , dated 11.12.1963, Co-operative institutions wherein model by-laws had been registered under Section 11 of the Co-operative Societies Act, Section 41 of the Tamil Nadu Shops and Establishments Act,1947 would not operate to provide an appellate remedy for the aggrieved person. However, it is seen from the order passed by the division bench that the subsequent notification issued by the Tamil Nadu government on 14.10.1987 had not been discussed.

9. However, it is clear from the later order of the learned single Judge of this court in Management of Madras Atomic Power Project Employees Consumer Co-operative Stores Ltd Vs. Deputy Commissioner of Labour and others, reported in 2000-II-LLJ 43 that the said G.O.Ms.No.5780 , dated 11.12.1963, had been modified by a notification of the Government of Tamil Nadu, dated 14.10.1987. According to the said notification Section 41 of the Shops and Establishments Act, 1947, would be available to an aggrieved person.

10. The learned single judge has also noted the fact that though Co-operative Societies are exempted from certain provisions of the Act, it is clear from the notification of the Government of Tamil Nadu No.11(2)/LE/5671/79, published in the Tamil Nadu Government Gazette Part II, Sec.2, dated October 14, 1987, at page 774, the Governor of Tamil Nadu has exempted permanently all societies registered or deemed to be registered under the Tamil Nadu Co-operative Societies Act,1961 (Tamil Nadu Act 53 of 1961), from the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

provisions of the Tamil Nadu Shops Act XXXVI of 1947, except Secs.31,41,43,50 and 51 of the said Act.

11. The learned single Judge of this Court has extensively dealt with the relevant provisions of the Tamil Nadu Co-operative Societies Act, 1983, and the Tamil Nadu Shops and Establishments Act, 1947, while coming to the conclusion that Section 41 of the Tamil Nadu Shops and Establishments Act, 1947, can be invoked by an employee of a co-operative society, even if he is in a position , in some way, managing the affairs of the society. In such circumstances, the contentions raised by the learned counsel for the petitioner with regard to lack of jurisdiction in the appellate authority cannot be sustained.

12. In view of the above decisions , it is clear that the right of appeal of an employee vested in him cannot be taken away, even if a separate appeal is provided under the registered by-laws of a co-operative institution. Further, it is clear from the facts of the case that the appellate authority, the second respondent herein, had passed a detailed order on 07.05.2001, in T.N.S.E Appeal No.5 of 1997, allowing the appeal and setting aside the order of the petitioner bank, dated 01.09.1997. On a perusal of the records placed before this court and based on the arguments advanced by the learned counsel appearing for the parties and on an analysis of the case laws cited, this court is of the considered view that the order of the appellate authority, dated 07.05.2001, cannot be claimed to be an illegal order passed without jurisdiction. In such view of the matter, the writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar

/true copy/

Sub Assistant Registrar

To

1.The Special Officer,Management of Akkur Primary
Agricultural Co-op. Bank Ltd., Akkur (Post) Nagapattinam District.

2.The Deputy Commissioner of Labour, Thiruchirapalli.

+ one cc to Mr.A.Muthukumar, Sr.No.27432.
+ one cc to Mr.Peruvazhuthi,Sr.No.27331.
+ one cc to Government Pleader, Sr.No.27561.

HPR (CO)/RSM/25.7.2006

WRIT PETITION No.17285 of 2001

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/